



The City of West University Place

A Neighborhood City

ZONING BOARD OF ADJUSTMENT
MUNICIPAL BUILDING
3800 UNIVERSITY BOULEVARD
REGULAR MEETING MINUTES
July 28, 2016
6:30 pm

I.	MEMBERS PRESENT:	Ed Sobash (voting), Edward Nikonowicz (voting), Chris Heard (voting), Neil Martin(voting) and Dave Miller (voting)
II.	MEMBERS ABSENT:	Janet Parisi, Donald Yurewicz and Sandy Hellums
III.	STAFF PRESENT:	Martye Kendrick, Legal Counsel; Debbie Scarcella, City Planner; and Josie M. Hayes, Administrative Coordinator
IV.	CALL TO ORDER:	6:35 pm.

Agenda Item

Discussion

Action

1	Call the meeting to order. Notices, Rules, Etc.	Ed Sobash called the meeting to order at 6:35 p.m. Ed Sobash asked each member to briefly introduce themselves and state if they are voting or nonvoting. Debbie Scarcella, City Planner, stated that all notices were posted in accordance with state and local requirements. Ed Sobash then described the hearing procedures. Swearing in of witnesses. Ed Sobash stated that there had been a request by a representative of the owner, Reid Wilson, to be designated as a party to the application. Discussion ensued regarding reordering the agenda by moving agenda item 2 behind agenda item 4 because the decisions in items 3 and 4 may determine the decision in item 2.	Neil Martin moved to accept that all notices were properly posted and distributed for this meeting. Second by Dave Miller. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried. Ed Sobash administered the oath to all witnesses. Dave Miller moved to designate Reid Wilson, representative of the owner in Docket 2016-009. Second by Edward Nikonowicz. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried. Edward Nikonowicz moved to reorder the agenda and hear Docket 2016-009 before the request for refund in Docket 2016-005. Second by Dave Miller. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried.
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2	<p>Docket No. 2016-05, regarding a refund of the application fee for appeal of the Administrative Official's Decision. (No hearing required).</p>	<p>The applicant in docket 2016-05, Robert Grossman, has requested that the Zoning Board of Adjustment authorize the refund of the application fee for said docket. The applicant paid \$400.00 total for the application. \$150.00 of that fee is a deposit for mailing notices and recording fees. According to Appendix F of the City Code of Ordinances, the ZBA may authorize a refund of the fees or costs if 1) the applicant prevails; 2) the ZBA reverses or modifies an administrative interpretation or other decision; and 3) the ZBA determines that the refund would be just and equitable under the facts and circumstances of the case. The refund may be in part or in whole.</p> <p>In Docket 2016-05, the applicant appealed the decision of the Administrative Official regarding loading and unloading of company service vehicles in the parking area behind the ATT facility at the corner of Ruskin and Academy. The ZBA determined that the activity in question was not an allowed activity on the residentially zoned portion of the building site. The decision was therefore reversed.</p>	<p>After deliberation, motion to refund \$200 made by Dave Miller. Second by Ed Nikonowicz. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried.</p>
3	<p>Docket No. 2016-09, Property at 6707 Academy, West University Place, Texas 77005 (Appeal)</p> <p>a. Public hearing regarding an appeal of a decision of the Administrative Official.</p> <p>b. Deliberation, decisions, other action, etc. regarding the preceding matters.</p>	<p>The applicant, Mr. Robert Grossman, is appealing a decision of the Administrative Official regarding approval of proposed plans for a building site located at 6707 Academy Street and "0" Ruskin Street (ATT facility). The applicant requests that 1) the decision of the building official to issue Permit 16-00700 be reversed; 2) adopt a proposed decision that a driveway connecting to 6707 Academy be prohibited; and 3) adopt a proposed decision that ATT must either remove the existing fence and gates along Academy and not construct other structures except to maintain the masonry wall along Ruskin, or, discontinue the parking of vehicles owned by ATT or its employees on the lots. The applicant made a lengthy presentation regarding the residential nature and</p>	<p>Dave Miller moved to close the evidentiary portion of the hearing. Second by Edward Nikonowicz. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried.</p> <p>After deliberations Neil Martin moved to reject the request for appeal of the AO determination to approve the plans in docket 2016-009. Second by Chris Heard. Ayes: None. Noes: Ed Sobash, Edward Nikonowicz, Neil Martin, Dave Miller and Chris Heard. Motion Failed.</p> <p>Discussion resumed.</p> <p>Neil Martin moved to affirm the Administrative Official's determination to approve the plans for permit issuance.</p>





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	<p>designation of the 6700 block of Academy.</p> <p>There was no correspondence received in favor of the request and one letter against the request. The following attendees spoke regarding the request:</p> <p>Amar Patel, MD 4020 Ruskin John Tainer 4107 Ruskin Jennifer Black 4040 Ruskin Boris Markhasin 4024 Ruskin Alida Drewes 6112 Fordham Jeff Relf 4039 Riley</p> <p><u>Background Information</u></p> <p>The AT&T site is an L-shaped property located at the corner of Bellaire Boulevard and Academy Street and extending to the corner of Academy and Ruskin Streets. A portion of the site is zoned Light Commercial (C), another portion Single Family (Detached) Third District (SF-3), and the remainder Planned Development District Single Family Second (PDD SF-2). The property was developed initially on the south portion of the building site in 1940 with subsequent additions, including a major one in 1956 that extended the building almost the entire length of the lot fronting on Bellaire Blvd. In 1970 and 1975, the City Council enacted rezoning ordinances for six adjacent rear lots along Ruskin to allow for parking of company owned and employee owned vehicles. The use of the existing building structures on the site have basically remained as a switching station for telephone service, but has also housed multiple company related activities throughout the years. At times there have been a large number of occupants and at other times a small number of occupants. Recently the activity levels increased and concerns were expressed that the business activities occurring on site did not comply with the ordinance restrictions on the use of the rear lots for parking. Staff researched and wrote a decision on November 9, 2015 regarding the activities taking place on the site. The decision stated that the activity related to the</p>	<p>Second by Chris Heard. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion Carried.</p>
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dumpster/recycle storage bins and the access for delivery vehicles were not allowed on those lots zoned for parking and located within the SF-3 and PDD SF-2 districts. Those activities that are categorized as Medium Commercial, such as vehicle maintenance or auto intensive uses, are also not allowed. ATT appealed the decision and additionally asked for a special exception and/or a variance to continue the use of the dumpster and access for delivery vehicles through the parking area. The ZBA affirmed the AO decision at a meeting held on January 28, 2016, and denied the special exception and variance requests. Subsequently, in order to comply with the ZBA decision of January 28, 2016, construction plans were submitted showing work to relocate the trash collection area and reconfigure the area between the rear of the building and the parking area to use for service vehicle deliveries. The plans also showed the installation of a masonry fence with opaque gates across the driveways along the Academy property line. The fence is shown continuing along the north property line of the commercially zoned site in order to provide a screen for the trash collection area and loading area. Additional plantings are planned through here as well for screening purposes.

Staff Response

The property owner will have to relocate the garbage collection/pickup area and the location for its delivery vehicles to access the loading/unloading area. The property owner proposed to use an existing driveway curb cut for access off of Academy that is wholly located on the commercial building site. This curb cut/access has been located on this property and not changed for quite some time. A wrought iron fence was installed just inside the property line across the area that would normally be accessed from this curb cut, but the curb cut/access is still useable and was not changed or removed to install the existing fence section. Any Prior Nonconforming





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	<p>(PNC) status that the curb cut/access has acquired has not been lost.</p> <p>The applicant also believes the approval was in conflict with Section 8-104 of the zoning regulations regarding the location of the curb cut/access. Section 8-104 prohibits a driveway or curb cut from being oriented toward or connected to a residential street when a building site with a non-residential use abuts both a residential street and a major thoroughfare. The definition of major thoroughfare includes Bellaire Boulevard. The definition of residential street is a street where within 200 feet of a given site, 51 percent or more of the property <u>fronting</u> on either side of the street is within a residential district. A property “fronts” a street where the front setback or yard shares a property line with the street right of way. All of the residential properties along Academy “front” on either Cason or Ruskin Streets. This portion of Academy, for zoning regulation purposes, would not be considered a residential street. If we did calculate the linear footage of all of the properties abutting Academy up to Ruskin Street on each side, the footage of the commercial properties still exceed, percentage wise, the footage of the residential properties.</p> <p>The proposed fence is planned along the Academy property line to the northern most curb cut/access. Per Table 7-6 of the zoning ordinance, a fence is an allowed projection or encroachment no matter which zoning district the building site lies in. The fence will have to meet provisions for a masonry fence contained in Chapter 18 of the code of ordinances. While the originating ordinance amendments 932 and 1039 prohibited other structures on the parking area lots, the zoning ordinance at that time did not list a definition of “structure” or contain fencing requirements. The word structure would have been referring to a building of some sort, such as a gatehouse to monitor the entry and exit of vehicles or even any further additions to the main facility.</p>	
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		<p>The ZBA has the authority to affirm, reverse or modify the administrative official's determination in part or in whole. When there is an appeal, the board assumes the responsibility for interpretation of the ordinances from the administrative official. There are no findings that guide the board in determining the outcome of an appeal. In this instance, the board cannot revoke or suspend a permit, but can only reverse the determination by the administrative official that the plans comply with the zoning regulations.</p>	
4	Docket No. 2016-10, regarding an application for rehearing/reconsideration of a decision in Docket 2016-005 regarding property at "0" Ruskin and 6707 Academy. (No hearing required).	<p>The applicant submitted a petition requesting that the ZBA consider new evidence not presented at the public hearing for Docket 2016-005 pm June 23, 2016. Sandy Hellums, as required by the ZBA rules of procedure, moved to place the request on the ZBA agenda so that a determination of whether or not there is new evidence to be provided to warrant a new hearing or a reconsideration of the decision.</p> <p>According to the rules of procedure, the board first must hear the information as an agenda item and if it determines that there is enough information to either reconsider or modify the decision or conduct a new hearing, then a new hearing can be scheduled for the next meeting date. Notices are not required for this part of the request, but if the board votes to reconsider or hold a new hearing, notices will be required at that time.</p> <p>The applicant, ATT, represented by Reid Wilson, made a short presentation reiterating their request. Mr. Wilson introduced Johnny Nicolson, the on-site supervisor of the Direct TV division of ATT to present new evidence as to the layout of the facility and activities of the workers. This was in rebuttal to claims</p>	<p>Dave Miller moved to deny the request for a rehearing/reconsideration of the decision due to the presentation of information being the same as that presented in the initial hearing. Second by Chris Heard. Ayes: Chris Heard, Dave Miller and Neil Martin. Noes: Ed Nikonowicz and Ed Sobash. Motion Failed 3-2.</p> <p>Discussion resumed regarding the use of the parking area for activities other than parking.</p> <p>Edward Nikonowicz moved to deny the request to rehear/reconsider Docket 2016-005. Second by Neil Martin. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion Carried.</p>





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		<p>made at the hearing that the building had become a warehouse and distributor type operation. Mr. Wilson then introduced John Neighbors, past Mayor Protemp, who chaired the public hearing when the property was initially rezoned and approved as a parking area. Mr. Neighbors shared his thoughts on why the rezoning took place and shared that there were both employee vehicles and company vehicles parking on the streets. The rezoning was an effort to get as many vehicles as possible off of the street in response to the many neighbor complaints.</p> <p>The board has the authority to hear this petition. The board may deny the request and the decision remains as it is. The board may reconsider the decision in whole or in part, and may modify or keep any part of it. The board may also determine there is enough new evidence or a change in the facts to warrant a new hearing. The original decision was to determine if the activities of loading and unloading company service vehicles for the purposes of stocking up supplies and taking inventory were allowed uses on the residentially zoned portion of the building site.</p>	
5	Meeting Minutes.	<p>Approval of meeting minutes of May 26, 2016.</p> <p>Approval of meeting minutes of June 23, 2016</p>	<p>Approval of minutes deferred until the next meeting.</p> <p>Dave Miller moved to approve the minutes as amended. Second by Edward Nikonowicz. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried.</p>
	Adjournment.	<p>The meeting was adjourned at 10:43 pm.</p>	<p>Edward Nikonowicz moved to adjourn the meeting. Second by Dave Miller. Ayes: Ed Sobash, Edward Nikonowicz, Chris Heard, Neil Martin and Dave Miller. Motion carried.</p>

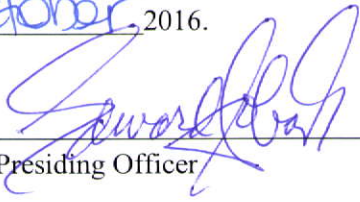




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APPROVED THIS 27th DAY OF October, 2016.



Presiding Officer

ATTEST: 

Debbie Scarcella, City Planner

